

EXHIBIT A

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7

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11) Case No.: 2:15-cv-09780-JAK-KS
12 JAMIL LITTLEJOHN,)
13) [PROPOSED] FINAL PRETRIAL
Plaintiff,) CONFERENCE ORDER
14 v.)
15) Pre-Trial Date: January 23, 2017
FINANCIAL CREDIT NETWORK,) Time: 3:00 p.m.
16 INC.,) Courtroom: 10B
17) Trial Date: January 31, 2016
Defendant.)

18) HON. JOHN A. KRONSTADT
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

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1 Following pretrial proceedings, pursuant to F.R.Civ. P. 16 and L.R. 16, IT IS
2 ORDERED:

3
4 **1. THE PARTIES**

5 The parties are:

- 6 a. Jamil Littlejohn, Plaintiff
7
8 b. Financial Credit Network, Defendant

9 Each of these parties has been served and has appeared. All other parties
10 named in the pleadings and not identified in the preceding paragraph are now
11 dismissed.
12

13 The pleadings which raise issues are:

- 14 a. Plaintiff's First Amended Complaint
15

16 However, plaintiff has withdrawn his claims under Section 1692g,
17 1692c(a)(1) and 1692c(a)(3) and will not be pursuing those claims at trial.

- 18 b. Defendant's Answer to the First Amended Complaint
19

20 **2. VENUE AND JURISDICTION**

21 Federal jurisdiction and venue are invoked upon the grounds:

22 Jurisdiction of this court arises pursuant to: (1) 28 U.S.C. § 1331, granting
23 this court original jurisdiction of all civil actions arising under the laws of the
24 United States (TCPA and FDCPA claims); (2) 15 U.S.C. § 1692k(d), which states
25 that such actions may be brought and heard before "any appropriate United States
26 district court without regard to the amount in controversy," (FDCPA claims); and
27
28

(3) 28 U.S.C. §1367 providing for supplemental jurisdiction over non-federal claims that are part of the same case or controversy (Rosenthal Act claims). Defendant conducts business in the State of California and therefore, personal jurisdiction is established. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the events giving rise to Plaintiff's claims in his Complaint occurred in California.

3. TRIAL ESTIMATE

The trial is estimated to take 3 trial days.

4. JURY TRIAL

The trial is to be a jury trial.

By January 9, 2017, the parties shall lodge and serve by e-mail, fax, or personal delivery: (a) proposed jury instructions as required by L.R. 51-1 and (b) and special questions requested to be asked on voir dire.

5. ADMITTED FACTS

The following facts are admitted and require no proof:

- 1) Defendant is a debt collector.
- 2) Plaintiff is a consumer.
- 3) Defendant attempted to collect a consumer debt from plaintiff.
- 4) Plaintiff provided his cellular telephone number 323-915-8044 to Park Water Co.

///

///

1 5) Defendant was referred plaintiff's Park Water Co. account for collection
2 purposes and was acting as the collection agent for Park Water Co. when
3 it placed calls to the number 323-915-8044.
4

5 6) Plaintiff was the intended recipient of defendant's calls to the number
6 323-915-8044.
7

8 7) The number 323-915-8044 was assigned to a cellular telephone used by
9 plaintiff during the relevant times.
10

11 **6. STIPULATED FACTS**

12 The following facts, though stipulated, shall be without prejudice to any
13 evidentiary objection:
14

15 None.
16

17 **7. CLAIMS AND DEFENSES OF THE PARTIES**

18 Plaintiff:

19 a. Plaintiff plans to pursue the following claims against Defendant:

20 1. Defendant violated 47 U.S.C. §227(b)(1)(A)(iii) by placing calls to
21 Plaintiff's cellular telephone using an automatic telephone dialing system or
22 prerecorded voice.
23

24 2. Defendant violated § 1692c(a)(2) of the Fair Debt Collection Practices
25 Act by communicating directly with plaintiff after defendant was aware that
26 plaintiff was represented by counsel with respect to the debt.
27

28 ///

1 3. Defendant violated §1692d of the Fair Debt Collection Practices Act
2 by engaging in conduct the natural consequence of which is to harass, oppress, or
3 abuse Plaintiff in connection with the collection of a debt.
4

5 4. Defendant violated §1692d(5) of the Fair Debt Collection Practices
6 Act by causing a telephone to ring repeatedly and continuously with the intent to
7 annoy, abuse and harass Plaintiff by calling Plaintiff multiple times.
8

9 5. Defendant violated §1692f of the Fair Debt Collection Practices Act
10 by using unfair and unconscionable means to collect a debt.
11

12 6. Defendant violated the Rosenthal Act, Cal Civ. Code §1788.17, by
13 engaging in conduct the natural consequence of which is to harass, oppress, or
14 abuse Plaintiff in connection with the collection of a debt and causing a telephone
15 to ring repeatedly and continuously with the intent to annoy, abuse and harass
16 Plaintiff by calling Plaintiff multiple times.
17

18 b. The elements required to establish Plaintiff's claims are:
19

20 1. To establish Defendant violated 47 U.S.C. §227(b)(1)(A)(iii) Plaintiff
21 must establish: (1) Defendant called a cellular telephone; (2) Plaintiff was the
22 intended recipient of Defendant's calls or the owner or primary user of the phone
23 (the "called party"); and (3) an automatic telephone dialing system or prerecorded
24 voice was used.
25

26 2. To establish Defendant violated 15 U.S.C. § 1692c(a)(2), Plaintiff
27 must prove: (1) Defendant knew that Plaintiff was represented by an attorney with
28

1 respect to such debt; (2) Defendant had knowledge of, or could readily ascertain,
2 such attorney's name and address; and (3) Defendant communicated with Plaintiff
3 directly after knowing that Plaintiff was represented.
4

5 3. To establish Defendant violated 15 U.S.C. §1692d, Plaintiff must
6 establish: (1) Plaintiff owes a consumer debt; (2) Defendant is a debt collector; and
7
8 (3) Defendant's collectors engaged in conduct the natural consequence of which is
9 to harass, oppress, and abuse the Plaintiff.

10 4. To establish Defendant violated 15 U.S.C. §1692d(5), Plaintiff must
11 establish: (1) Plaintiff owes a consumer debt; (2) Defendant is a debt collector; and
12
13 (3) Defendant's collectors caused Plaintiff's telephone to ring repeatedly and
14 continuously with the intent to annoy, abuse, and harass Plaintiff.
15

16 5. To establish Defendant violated 15 U.S.C. §1692f, Plaintiff must
17 establish: (1) Plaintiff owes a consumer debt; (2) Defendant is a debt collector; and
18
19 (3) Defendant's collectors used unfair and unconscionable means to attempt to
20 collect a debt from Plaintiff.

21 c. In brief, the key evidence Plaintiff relies on for each of the
22 claims is:
23

24 1. To establish Defendant violated 47 U.S.C. §227(b)(1)(A)(iii) Plaintiff
25 will rely on the following evidence: (1) Stipulation of the parties that Plaintiff's
26 telephone number is for a cellular telephone and Plaintiff's testimony; (2)
27 stipulation of the parties that Plaintiff was the intended recipient of calls and
28

1 Plaintiff's testimony that he is the owner and regular user of the cellular telephone;
2 and (3) testimony of Defendant's corporate representative as to its telephone
3 dialing system and Defendant's account notes.
4

5 2. To establish Defendant violated 15 U.S.C. §1692c(a)(2), Plaintiff will
6 rely on the following evidence: (1) Plaintiff's counsel's letter of representation; (2)
7 Defendant's account notes; and (3) Plaintiff's testimony regarding the calls he
8 received from Defendant.
9

10 3. To establish Defendant violated 15 U.S.C. §1692d, Plaintiff will rely
11 on the following evidence: (1) Stipulation of the parties that the debt in this case is
12 a "debt" under the FDCPA and Plaintiff's testimony that the debt arose from
13 transactions primarily for personal, family or household purposes; (2) stipulation of
14 the parties that Defendant is a "debt collector" and acted as such in this case and
15 testimony from Plaintiff that the debt in this case is a Park Water Company
16 account; and (3) Plaintiff's testimony that Defendant's collectors engaged in
17 conduct the natural consequent of which is to harass, oppress, and abuse the him.
18
19

20 4. To establish Defendant violated 15 U.S.C. §1692d(5), Plaintiff will rely on
21 the following evidence: (1) Stipulation of the parties that the debt in this case is a
22 "debt" under the FDCPA and Plaintiff's testimony that the debt arose from
23 transactions primarily for personal, family or household purposes; (2) stipulation of
24 the parties that Defendant is a "debt collector" and acted as such in this case and
25 testimony from Plaintiff that the debt in this case is a Park Water Company
26
27
28

1 account; and (3) Plaintiff's testimony that Defendant's collectors caused his
2 cellular telephone to ring repeatedly and continuously even after he told them to
3 stop calling and with the call pattern demonstrating an intent to harass, abuse and
4 annoy him.

5
6 5. To establish Defendant violated 15 U.S.C. §1692f, Plaintiff will rely on the
7 following evidence: (1) Stipulation of the parties that the debt in this case is a
8 "debt" under the FDCPA and Plaintiff's testimony that the debt arose from
9 transactions primarily for personal, family or household purposes; (2) stipulation of
10 the parties that Defendant is a "debt collector" and acted as such in this case and
11 testimony from Plaintiff that the debt in this case is a Park Water Company
12 account; ; and (3) Plaintiff's testimony that Defendant's means to collect this debt
13 were unconscionable and unfair.
14
15
16

17 d. In brief, the key evidence Plaintiff relies on to defend against
18 Defendant's affirmative defenses is:
19

20 1. To counter Defendant's affirmative defense of "prior express consent"
21 to call under 47 U.S.C. §227(b)(1)(A)(iii) Plaintiff will rely on the following
22 evidence: (1) Testimony of Plaintiff that when he provided his cellular telephone
23 number to Park Water Company it was in regard to emergency service and not as
24 part of the transaction resulting in the debt at issue in this case; (2) testimony of the
25 Plaintiff that in December 2014 he told Defendant to stop calling which would
26 serve to revoke consent had it existed; and (3) Defendant's account notes.
27
28

Defendant:

i. Defendant plans to pursue the following counterclaims and affirmative defenses:

1) Prior Express Consent. FCN had prior express consent to call plaintiff's cellular telephone. Plaintiff admits that he provided his cellular telephone number to the creditor, Park Water Co., in connection with his account. (Response to Request For Admission No. 2.) It was a debt arising from this account that FCN was basis for FCN's calls to plaintiff. As such, FCN, the agent for Park Water Co. had prior express consent to call the number.

2) Bona fide Error. Defendant has no civil liability under the Rosenthal FDCPA, Cal. Civ. Code §§ 1788, *et seq.*, pursuant to Cal. Civ. Code § 1788.30(e) or the federal FDCPA pursuant to 15 U.S.C. § 1692k(c) as any violation was unintentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

3) Statute of Limitations. Plaintiff cannot maintain FDCPA or Rosenthal Act claims that occurred prior to December 21, 2014. (15 U.S.C. § 1692k (d); Civil Code § 1788.30(f).)

4) The elements required to establish Defendant's counterclaims and affirmative defenses are:

a) Prior Express Consent

- 10 -

1. Plaintiff provided his cellular telephone number to the creditor in connection with his account.

2. Defendant was attempting to contact plaintiff regarding the account.

b) Bona Fide Error.

1. The violation was not intentional
2. Defendant maintained procedures reasonably adapted to prevent the alleged violation.
3. The error occurred despite the maintenance of those procedures.

c) Statute of Limitation

1. The alleged violation occurred more than one-year prior to the filing of the complaint.

5) In brief, the key evidence Defendant relies on for each counterclaim and affirmative defense is:

Prior Express Consent

Plaintiff admits that he provided his cellular telephone number to the creditor, Park Water Co., in connection with his account. (Response to Request For Admission No. 2.) It was a debt arising from this account that was basis for FCN's calls to plaintiff. As such, FCN, the agent for Park Water Co., had prior express consent to call the number. Additionally, to the extent the plaintiff now asserts that he provided his number for a specific or limited purpose only, defendant will present the

1 testimony of Maria Wilson from Park Water Co. to rebut
2 plaintiff's assertions.

3
4 **Bona Fide Error**

5 Defendant has policies and procedures in place regarding ceasing
6 communication with a debtor. (Cease Communication Policy, Procedure and
7 Work Instruction (Exhibit 11.) Defendant's policies are written policies on which
8 its employees are trained. Further, Defendant audits its collectors to ensure
9 compliance with its policies.

10 Defendant has policies and procedures in place regarding notice that a
11 consumer is represented by an attorney. (Attorney Contact Policy, Procedure and
12 Work Instruction, Exhibit 13.) Defendant's policies are written policies on which
13 its employees are trained. Further, Defendant audits its employees to ensure
14 compliance with its policies. Here the policy was followed, the attorney
15 information was entered into the account and the consumer's telephone number
16 and address was removed so that no further contact could be made. But due to the
17 deliberately misleading nature of the attorney letter, FCN identified an account for
18 a "Jamil Littlejohn" instead of "Jay Littlejohn" and, thus, placed two calls to
19 plaintiff.

20 **Statute of Limitations**

21 The complaint was filed on December 21, 2015.

22 **8. ISSUES TO BE TRIED**

23 In view of the admitted facts and the elements required to establish the
24 claims, counterclaims, and affirmative defenses, the following issues remain to be
25 tried:
26

27 ///
28

1 a. Whether Defendant's calls to Plaintiff were placed with an
2 automatic telephone dialing system.

3 b. Whether Plaintiff gave valid "prior express consent" to Defendant.

4 c. If Plaintiff gave valid "prior express consent", whether he told
5 Defendant to stop calling and revoked that consent.
6

7 d. If Plaintiff revoked consent, when consent was revoked.

8 e. Whether Defendant violated the TCPA.

9 f. If Defendant violated the TCPA the number of violations.

10 g. Whether Defendant acted "willfully" or "knowingly" when in
11 violation of the TCPA when it placed calls to Plaintiff.
12

13 h. If Defendant intentionally or knowingly violated the TCPA, the
14 number of willful or knowing violations.
15

16 i. Whether Defendant violated § 1692c(a)(2) by communicating
17 directly with plaintiff after knowing that plaintiff was represented by counsel with
18 respect to the debt in question.
19

20 j. Whether Defendant violated §1692d of the Fair Debt Collection
21 Practices Act by engaging in conduct the natural consequence of which is to
22 harass, oppress, or abuse Plaintiff in connection with the collection of a debt;
23

24 k. Whether Defendant violated §1692d(5) of the Fair Debt Collection
25 Practices Act by causing a telephone to ring repeatedly and continuously with the
26 intent to annoy, abuse and harass Plaintiff by calling Plaintiff multiple times;
27
28

1. Whether Defendant violated §1692f of the Fair Debt Collection Practices Act by using unfair and unconscionable means to collect a debt.

m. Whether any violation is excused by the bona fide error defense;
and

n. Whether any violation is barred by the statute of limitations.

9. DISCOVERY

Defendant has requested available dates for the deposition of plaintiff's counsel (pursuant to the Court's January 4, 2017 order) and is waiting for a response from plaintiff. All other discovery is complete.

10. PRETRIAL DISCLOSURES AND EXHIBITS

All disclosures under F.R.Civ.P.26(a)(3) have been made.

The joint exhibits list of the parties has been filed under separate cover as required by L.R. 16-6.1. Unless all parties agreed that an exhibit shall be withdrawn, all exhibits will be admitted without objection at trial, except those exhibits listed below:

Plaintiff objects to Exhibit Nos.: None

Defendant objects to Exhibit Nos.: None

The objections and grounds therefor are: Not applicable.

11. WITNESS LISTS

Witness lists of the parties have been filed with the Court.

1 Only the witnesses identified in the lists will be permitted to testify (other
2 than solely for impeachment).

3 Each party intending to present evidence by way of deposition testimony has
4 marked such depositions in accordance with L.R. 16-2.7. For this purpose the
5 following depositions shall be lodged with the Clerk as requires by L.R. 32-1:
6
7 Deposition of Plaintiff Jamil Littlejohn.
8

9 **12. PENDING MATTERS**

10 The following law and motion matters and motions in limine, and no others,
11 are pending or contemplated:
12

13 None

14 **13. BIFURCATION**

15 Bifurcation of the following issues for trial is ordered:
16

17 Should Plaintiff prevail on his claims, Plaintiff shall seek his reasonable
18 attorneys' fees and costs by way of motion to this Honorable Court at the
19 conclusion of trial.
20

21 **14. PRETRIAL ORDER**

22 The foregoing admissions having been made by the parties, and the parties
23 having specified the foregoing issues remaining to be litigated, this Final Pretrial
24 Conference Order shall supersede the pleadings and govern the course of the trial
25 of this cause, unless modified to prevent manifest injustice.
26
27
28

1 Dated: _____, 2017.

2
3
4 UNITED STATES DISTRICT JUDGE

5
6
7
8 Approved as to form and content.

9
10 /s/ *Rachel R. Stevens*
11 Attorney for Plaintiff

12 /s/ *Amanda N. Griffith*
13 Attorney for Defendant